

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District    Missouri (Western)
Name <i>(under which you were convicted)</i> : RANDY G. DABNEY		Docket or Case No.: 6:23-cv-
Place of Confinement: MCFP Springfield	Prisoner No.: 17642-045	
<div style="display: flex; justify-content: space-between;"> <span>UNITED STATES OF AMERICA</span> <span>Movant <i>(include name under which convicted)</i></span> </div> <div style="text-align: center; margin-top: 10px;"> V.      RANDY G. DABNEY </div>		

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:  
The Honorable Roseann A. Ketchmark, United States District Judge for the Western District of Missouri

(b) Criminal docket or case number (if you know): 6:17-cr-03007-1

2. (a) Date of the judgment of conviction (if you know): 5/7/2021

(b) Date of sentencing: 5/6/2021

3. Length of sentence: 360 months' imprisonment; 5 years' supervised release

4. Nature of crime (all counts):

Conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii)

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)      Jury ☐      Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?      Yes ☐      No ☒

8. Did you appeal from the judgment of conviction?      Yes ☒      No ☐

## 9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Eighth Circuit(b) Docket or case number (if you know): 21-2111(c) Result: Affirmed(d) Date of result (if you know): 8/3/2022(e) Citation to the case (if you know): 42 F.4th 984 (8th Cir. 2022)

(f) Grounds raised:

1. THE DISTRICT COURT ERRED IN NOT SUSTAINING THE DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE SEIZED DURING HIS NOVEMBER 24, 2015 STOP BECAUSE THERE WAS NO REASONABLE SUSPICION TO SEARCH HIS VEHICLE AS THERE WAS NO ABILITY OF THE DEFENDANT TO GAIN CONTROL OF A WEAPON, AND BECAUSE THE SEARCH WENT BEYOND THE ALLOWABLE SCOPE; 2. THE DISTRICT COURT ERRED IN NOT SUSTAINING THE DEFENDANT'S MOTION FOR LEAVE TO FILE A SECOND MOTION TO SUPPRESS PHYSICAL EVIDENCE SEIZED DURING HIS APRIL 14, 2016 STOP BECAUSE THERE WAS DURING HIS APRIL 14, 2016 STOP BECAUSE THERE WAS GOOD CAUSE SHOWN FOR SAID LEAVE.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

## 10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

## 11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_

- 
12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: Mr. Dabney's Plea was not Knowingly, Intelligently and Voluntarily Entered as a Result of Ineffective Assistance of Counsel**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please see supporting facts in Section IV.A.2-3 of contemporaneously submitted Pro Se Memorandum of Law in Support of Motion to Vacate; and EX #1, Declaration of Randy G. Dabney in Support of Motion to Vacate attached to contemporaneously submitted Motion to Expand the Record.

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**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel may be initially presented in a Section 2255 proceeding. *Massaro v. United States*, 538 U.S. 500, 155 L.Ed.2d 714, 123 S.Ct. 1690 (2003).

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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**GROUND TWO:** Mr. Dabney was Denied the Effective Assistance of Counsel In Preparation for and During the Sentencing Hearing

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please see supporting facts in Section IV.B.2-3 of contemporaneously submitted Pro Se Memorandum of Law in Support of Motion to Vacate; and EX #1, Declaration of Randy G. Dabney in Support of Motion to Vacate attached to contemporaneously submitted Motion to Expand the Record.

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**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel may be initially presented in a Section 2255 proceeding. *Massaro v. United States*, 538 U.S. 500, 155 L.Ed.2d 714, 123 S.Ct. 1690 (2003).

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

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**GROUND THREE: Prosecutorial Misconduct – Violation of Brady Mandate**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please see supporting facts in Section IV.C of contemporaneously submitted Pro Se Memorandum of Law in Support of Motion to Vacate; and proposed exhibits attached to contemporaneously submitted Motion to Expand the Record.

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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**GROUND FOUR: Prosecutorial Misconduct – Breach of Plea Agreement**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please see supporting facts in Section IV.D of contemporaneously submitted Pro Se Memorandum of Law in Support of Motion to Vacate; and proposed exhibits attached to contemporaneously submitted Motion to Expand the Record

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**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

The claims of ineffective assistance of counsel which this motion is based upon were not previously presented. Claims of ineffective assistance of counsel may be initially presented in a Section 2255 proceeding. *Massaro v. United States*, 538 U.S. 500, 155 L.Ed.2d 714, 123 S.Ct. 1690 (2003).

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing:  
AFPD Ann M. Koszuth, Hammons Tower, 901 East Saint Louis Street, Suite 801, Springfield, MO 65806
- 
- (b) At the arraignment and plea:  
Joshua K. Roberts, 2202 W. Chesterfield Blvd., Suite 100, Springfield, MO 65807
- 
- (c) At the trial:  
N/A
- 
- (d) At sentencing:  
Joshua K. Roberts, 2202 W. Chesterfield Blvd., Suite 100, Springfield, MO 65807.
- 
- (e) On appeal:  
Joshua K. Roberts, 2202 W. Chesterfield Blvd., Suite 100, Springfield, MO 65807.
- 
- (f) In any post-conviction proceeding:  
N/A
- 
- (g) On appeal from any ruling against you in a post-conviction proceeding:
- 
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:
- 
- (b) Give the date the other sentence was imposed: \_\_\_\_\_
- (c) Give the length of the other sentence: \_\_\_\_\_
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

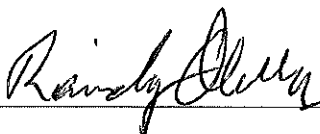
Therefore, movant asks that the Court grant the following relief:

vacate the conviction and sentence (ground one relief); vacate the sentence and schedule resentencing with the effective assistance of counsel and a third point off for acceptance (ground two relief); other relief described in supporting brief


or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on October 3, 2023  
(month, date, year)

Executed (signed) on  10-3-23  
(date)

OCT 03 2023

  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

U.S. Medical Center for Federal Prisoners  
P.O. Box 4000  
Springfield, MO 65801

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another address, please return the enclosure to the above address.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
AT SPRINGFIELD

REC'D OCT 04 2023

RANDY G. DABNEY,	)	
	)	
Movant,	)	USDC Case No. 6:23-cv-_____
	)	
v.	)	
	)	USDC Case No. 6:17-cr-03007-1
UNITED STATES OF AMERICA,	)	
	)	Hon. Roseann A. Ketchmark
Respondent.	)	United States District Judge

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**NOTICE OF TIMELY FILING**

I, RANDY G. DABNEY, *pro se*, certify under penalty of perjury, pursuant to 28 U.S.C. §1746, that I delivered to prison officials the original of the following documents, properly addressed to the Clerk, U.S. District Court, United States Courthouse, 222 N. John Q. Hammons Parkway, Springfield, MO 65806, and first-class postage prepaid, for mailing via the prison's legal mailing system:

1. Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody;

2. Verified Memorandum Brief in Support of Motion to Vacate;
3. Motion to Expand the Record with Attached Declaration; and
4. This Notice.

Done and executed this 3 day of October, 2023.

A handwritten signature in black ink, reading "Randy Dabney", is written over a horizontal line.

Randy G. Dabney, *Pro Se*

No. 17642-045

MCFP Springfield

Post Office Box 4000

Springfield, MO 65801

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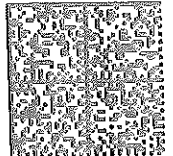
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SPRINGFIELD, MISSOURI 65806  
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*Attn: Pils Pro Se*

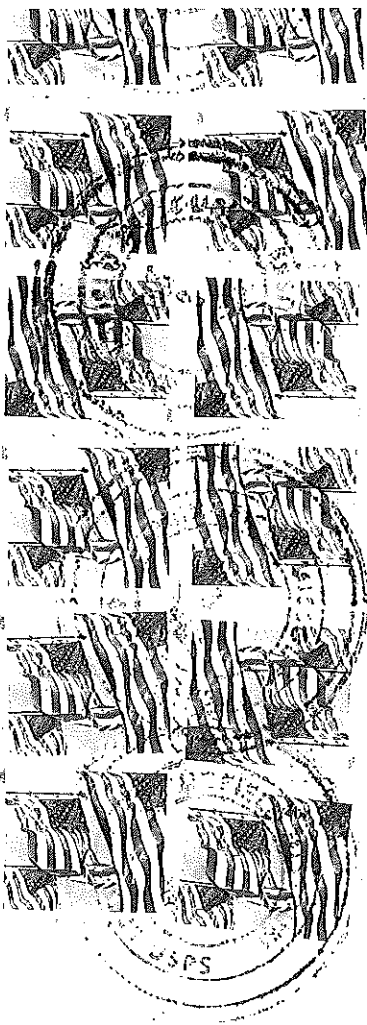
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REC'D OCT 04 2023

Cleek, U.S. District Court  
United States Courthouse  
222 N. John & Hammons Parkway  
Springfield, Mo. 65806

U.S. Medical Center for Federal Prisoners  
P.O. Box 4000  
Springfield, MO 65801

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